the latter, *held,* that if the foreman was where he had a right to be he was not required to retreat before firing in self-defense.

Following the English doctrine, many of the American courts hold that a homicide will not be excused on the ground of self-defense unless the slayer does that which is reasonably in his power to avoid the necessity of extreme resistance; he should retreat to the wall or other impediment before dealing a deadly blow. *Pond v. State,* 8 Mich. 150; *State v. Harper,* 1 Edm. Sel. Cas. (N. Y.) 180; *Pierson v. State,* 12 Ala. 149. But the prevailing view in this country is that the slayer need not retreat where the attack is violent and with a deadly weapon. *Beard v. United States,* 158 U. S. 550; *Runyan v. State,* 57 Ind. 80; *Tweedy v. State,* 5 Ia. (Clarke) 433; *State v. Ellenger,* 1 Brewst. (Pa.) 352. Where a man is attacked in his own house he is not bound to save himself by flight or retreat before taking life if this is necessary to protect himself or his home from forcible entry. *Alberty v. United States,* 162 U. S. 499; *State v. Middleham,* 62 Iowa 150; *Willis v. State,* 43 Neb. 102. In Ohio it has been held that homicide may be justified on the ground of self-defense without showing either that the slayer previously retreated or that such retreat was impracticable. *State v. Noble,* 1 Ohio, Dec. 1, and a like rule prevails in Texas by virtue of statute regulation, *Williams v. State,* 30 Tex. App. 429; Penal Code 573.

INSURANCE—LOSS BY FIRE—PARTNERSHIP—CHANGE OF INTEREST.—ROYAL INS. CO. V. MARTIN, 24 SUP. CT. 247.—Plaintiff insured his entire stock in trade under a policy providing that the risk should cease "to be in force as to any property insured which should pass from the insured to any other person otherwise than by operation of law," unless the approval of the insurer was secured. Plaintiff took his sons into the firm and himself became a silent partner, without such approval. *Held,* that the plaintiff could not recover even on his own interest in the partnership.

Insurance policies in case of doubt are to be construed in favor of the insured. *Hoffman v. Aetna Ins. Co.,* 32 N. Y. 405. And it is well settled that a partner has an insurable interest in the partnership property to the extent of his interest, *Converse v. Citizens' Ins. Co.,* 10 Cush. 37; *Peck v. Ins. Co.,* 22 Conn. 575; *Wood, Fire Ins.* (2d ed.), sec. 298. In most States it has been held that the sale of his interest by one partner to his co-partner was not such an alienation as was forbidden by a clause similar to the above, when no approval was secured. *Powers v. Guardian F. & L. Ins. Co.,* 136 Mass. 108; *Pierce v. Nashua Ins. Co.,* 50 N. H. 297; *Lockwood v. Middlesex Ins. Co.,* 47 Conn. 553. But the contract of insurance is personal and the introduction of a new member into a firm may often increase the risk. The insurer therefore has a right to demand that he be consulted. *Malley v. Ins. Co.,* 51 Conn. 222; *Richards, Ins.,* sec. 33. While the insured, as partner, still retains an interest in the property, it is a joint, and entirely different, interest from the one insured. The present decision accords with the general rule, although the opposite is held in *Cowen v. Iowa Ins. Co.,* 40 Iowa 55; *Blackwell v. Ins. Co.,* 48 O. S. 533.

JUDGMENT—FALSE RETURN—IMPEACHING RECORD.—GRAHAM V. LOH, 69 N. E. 474 (IND.).—An action was brought to vacate a judgment for fraud predicated on a false return of the officer, the defendant not having been

served with summons. *Held,* that unless the holder of the judgment had been guilty of fraud the action could not be maintained. Wiley, J., *dissenting.*

This decision is opposed to the prevailing view. *Black on Judgments,* sec. 377; *Freeman on Judgments,* sec. 495; *Ridgeway v. Bank,* 11 Humph. (Tenn.) 523; *Kibbe v. Benson,* 84 U. S. 629. According to these authorities the defendant may have relief whenever he has not been guilty of any fault. Such a proceeding is to be regarded as a direct attack upon the judgment. *Cotterall v. Koon,* 151 Ind. 182. The only Indiana case at all similar, *Nealis v. Dick,* 72 Ind. 378, in which it was held that because the prevailing party was guilty of fraud the judgment ought to be set aside. The principal case is, however, not unsupported. *Walker v. Robbins,* 55 U. S. 584; *Knox City v. Harshman,* 133 U. S. 152; *Taylor v. Lewis,* 19 Am. Dec. 135; the doctrine of these cases being based upon public policy.

MUSICAL COMPOSITIONS—COPYRIGHT—IMITATION.—BLOOM V. NIXON, 125 FED. 977.—Plaintiffs were owners of a copyrighted song which was rendered during the performance of a musical comedy by an actress. *Held,* that an imitation of the actress while singing such song, by another actress, in which she attempted to mimic the gestures of the original actress, and used only a portion of the song, was not within the statute prohibiting the performance, without the consent of the proprietor, of any dramatic or musical composition for which a copyright had been obtained.

The case proceeds upon the theory that it was the gestures which were represented through the medium of the song and these were not protected by the copyright. We find no cases in which this precise question has been considered. In the case of *Martinetti v. Maguire,* 1 Abb. (U. S.) 356, a bill to enjoin the reproduction of spectacular effects was dismissed, but questions of morality were also involved. The general rule is that any use of the original production, other than by multiplying it, as by public recitations, does not constitute an infringement of a copyright. *High on Injunctions,* sec. 1017.

NATURALIZATION—REQUIREMENT OF STATE STATUTE—PERJURY IN STATE COURT—JURISDICTION OF FEDERAL COURT.—UNITED STATES V. SEVERINO, 125 FED. 949.—In addition to the requirements of the United States law relative to naturalization, a State passed an act providing for the filing of a petition, accompanied by an affidavit of a citizen. *Held,* that perjury committed in making this affidavit was not punishable in the federal courts.

In New York it has been declared that a State court, acting under the naturalization laws of the United States, acts as the agent of the federal government and has no jurisdiction to punish criminal offenses against the United States, those being exclusively within the jurisdiction of the federal courts. *In re Ramsden,* 13 How. Prac. 429. In such other courts as have considered the question, it was held that false swearing, in naturalization proceedings, in State courts, is perjury at common law, and may be punished by the State as well as by the federal courts. *Comm. v. Fuller,* 8 Metc. (Mass.) 313; *Sutton v. State,* 9 Ohio 133. The principal case carries the latter rule one step farther in giving the State courts exclusive jurisdiction to punish perjury committed where, although acting in naturalization proceedings, they are acting pursuant to a State law.